IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14960 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHATT NAYANABEN DAYARAMBHAI

Versus

STATE OF GUJARAT

Appearance:

MR KB PUJARA for Petitioner No. 1

MRS MANISHA SHAH, AGP, for Respondent No. 1-2

RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 10/12/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the action of the respondents in wrongfully denying admission to the petitioner in ATD Course 2004-2005 on 27 seats provided for physically handicapped candidates @ 3% of total 880

seats.

2.0 The brief facts of the case can be summarized as under:

2.1 The petitioner is eligible and qualified to get admission in Art Teachers Diploma (ATD) course. The petitioner is a handicapped girl. Admissions to ATD Course are granted under Centralised Admission System on the basis of marks obtained at Standard XII Examination. She has secured 75.63% marks in the said examination. There is 3% reservation for handicapped persons in all categories.

2.2 The respondent no.2 herein issued an advertisement for Centralised Admission to ATD Course, 2004-2005 on 3.6.2004. The petitioner submitted her application along with all certificates and mark sheets.

2.3 In the past the respondents had granted admission in ATD course on the basis of merits by preparing merit lists of different categories viz. unreserved, SC, ST and SEBC. There were no separate merit lists for candidates of different streams viz. Science, General, Vocational and Post Basic. According to the petitioner, this year, after issuing the advertisement and after receiving the application forms, the respondents have prepared separate merit list of the candidates passing standard XII examination in different streams. From the merit lists it appears that the respondents have allotted seats as per the streams of the concerned candidates in standard XII. According to the petitioner, the respondents have provided only 6 seats for candidates of Post Basic Stream in which 3 seats are for general category, 1 for ST category, and 2 for SEBC category and no seat has been provided for handicapped persons. As a result of this though the petitioner is having 75.63% marks in HSC examination she was not granted admission to ATD Course.

2.4 Learned counsel for the petitioner submitted that the respondents have violated the statutory provisions of Section 39 of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which provides for mandatory requirement of providing for at least 3% of the seats in admission for disabled persons.

2.5 Learned counsel for the petitioner submitted that in view of the provisions of the aforesaid Act, the respondents are duty bound to give admission to at least

27 physically handicapped candidates in ATD course @ 3% of the total 880 seats. According to him the respondents have wrongfully denied admission to the petitioner by arbitrarily changing the procedure of admission after inviting applications for admission to ATD course. He submitted that the respondents have wrongly allocated total seats of ATD course on the basis of streams at standard XII examination. He contended that the respondents have provided for only 6 seats for candidates of post basic stream wherein 3 seats for general category 1 for SC category and 2 for SEBC category and no seat is provided for physically handicapped category.

2.6 Learned counsel for the petitioner contended that the respondent is duty bound to prepare a common merit list of all physically handicapped candidates for the purpose of 27 seats reserved for them in ATD Course, 2004-2005. According to him, in the instant case, physically handicapped candidates of general stream having only 72.33% is being granted admission, but the petitioner who is 75.63% marks is wrongly fully denied admission to ATD Course.

3.0 Mrs. Manisha Shah, learned AGP appearing for the respondents stated that vide communication dated 13th July 2004 The National Council for Teacher Education has addressed a communication to the Commissioner of Education, directing that the intake of 50 students per institutions in the ATD Course has been sanctioned and such institutions would be permitted to admit students only upto the number of intake for which recognition has been granted. Shri further submitted that the State Government vide Government Resolution dated 17.7.2004 has resolved that admission to ATD Course would be in accordance with the proposal forwarded by the Commissioner of Mid Day Meal and Schools, dated 22.7.2004. According to her it was also resolved that the admission to ATD Course shall be granted Streamwise in accordance with Rule 1 in Appendix 4 of the PTC admission Rules. Out of the total seats 30% of seats shall be allotted to candidates from Science Stream and 70% of seats shall be allotted to the candidates from the General, Vocational and Uttar Buniyadi Stream in ratio proportionate to successful candidates in respective stream in Higher Secondary School. She therefore submitted that the petitioner is not entitled to get any relief in this petition.

4.0 From the record it appears that on 3rd June 2004 the respondents have issued an advertisement in respect of admission to ATD Course. The instructions to be

followed while filling the applications are produced at Annexure-C (Page 22). Item No.19 states that for SC, ST, Handicapped persons, the prevailing rules will apply. In the present case when the notice was issued the respondent was supposed to follow the reservation of 3% as per the government rules. However, subsequent to the advertisement, on the basis of the subsequent government notification the respondents have changed the criteria for giving admission to ATD course. I am of the view that this is not permissible. When the advertisement was issued as per the rules the respondents were required to give 3% reservation of seats for physically handicapped persons. Admittedly in previous years admission was granted on the basis of merits by preparing merit lists of different categories viz. unreserved, SC, ST and SEBC and there were no separate merit lists for candidates of different streams viz. Science, General, Vocational, etc. Therefore, I am of the opinion that once the advertisement was issued and application forms were accepted on the basis of such advertisement, the respondents were not justified in going for another formula by depriving the present petitioner of getting her right under the Act. Even if it is to be presumed that such change can be made, then it should have been done in such a manner that such deviation would not deprive the rights of any other candidates who are otherwise eligible to get admission.

4.1 Section 39 of the Act provides for a mandatory requirement of providing for at least 3% of the seats in admission for disabled persons. In the present case, on the basis of 3% at least 27 seats are required to be allotted for handicapped persons. However, this position is altered because of the Government Resolution dated 17.7.2004. I am of the view that the resolution cannot have any effect which will have an overriding effect on the Act. Because of the change in allocation of seats, the purpose of section 39 of the Act is defeated.

4.2 It is also required to be noted that the respondents have declared that admissions would be granted to physically handicapped candidates of general stream having only 72.33% and even though the petitioner has passed HSC examination in Post Basic Stream with 75.63% she has been denied admission. I am of the opinion that strength of students passing in a particular stream is wholly irrelevant for the purpose of allocation of seats in ATD course.

4.3 In view of the above, it is clear that the allocation of seats for admission to ATD course according

to stream of candidates at Standard XII examination, and change of procedure after issuing advertisement and in not providing for any seat for physically handicapped candidates are not justified on the facts of the case.

5.0 Mr. Pujara, learned counsel for the petitioner has strongly relied upon a decision of the Supreme Court in the case of Maharashtra SRTC Vs. Rajendra Bhimrao Mandve, reported in (2001)10 SCC 51. In para 5 of the said decision it is observed as under:

> "... it would have been well open to the High Court to have declared that the criteria sought to be fixed by the circular dated 24.6.1996 as the sole determinative of the merit or grade of application and in the middle of the course of selection process (since in this case the driving test was stated to have been conducted on 27.11.1995) cannot be applied to the selections under consideration and challenged before the High Court. It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced."

5.1 Mr. Pujara, learned counsel for the petitioner has also relied upon a decision of this Court dated 18th August 2004 rendered in Special Civil Application No.2801/2001 and other allied matters wherein it is held that the authority should have considered the qualification as on the date of advertisement and that change of rules during the selection process is not permissible.

5.2 As stated earlier in the present case the Circular has been issued after the advertisement and acceptance of application forms. Therefore, the ratio laid down in the abovementioned decision is squarely applicable to the facts of the present case.

6.0 In view of the above, without going into the validity of the Circular dated 17.7.2004 the claim of the petitioner is required to be accepted only on the ground that the said circular has been issued after the advertisement dated 3rd June 2004.

7.0 In the premises aforesaid the petition is allowed. It is declared that the action of the

respondents in wrongfully denying admission to the petitioner in ATD Course 2004-2005 is illegal and arbitrary. The respondents shall consider the case of the petitioner as per the advertisement and give her admission to ATD Course, 2004-2005 subject to fulfillment of other conditions. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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